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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,385	09/18/2001	Tracy D. Mallory	BU1137C	1550
7590	10/31/2006		EXAMINER	
Brake Hughes PLC C/O Intelleivate P.O. Box 52050 Minneapolis, MN 55402				HYUN, SOON D
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 10/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SF

Office Action Summary	Application No.	Applicant(s)	
	09/955,385	MALLORY, TRACY D.	
	Examiner Soon D. Hyun	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 August 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 59-72 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 59-67 is/are allowed.
- 6) Claim(s) 68-72 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date. _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 68-71 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,335,933. Although the conflicting claims are not identical, they are not patentably distinct from each other because;

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or anticipated by, the earlier claim. *In re Lonqi*, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); *In re*

Berq, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30 2001).

Moreover, omission of a reference element whose is not needed would be obvious to one having ordinary skill in the art. It well settled that the omission of an element

and its functions is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 163 USPQ 184 (CCPA 1963). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969).

Claims 1, 2 or 3 of Patent No. 6,335,933 encompass the limitations of claims 68-71 of the instant application.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 68-71 are rejected under 35 U.S.C. 102(e) as being anticipated by Miklos (U.S. Patent No. 6,621,796).

Regarding claims 68 and 69, Miklos disclose an ARQ scheme comprising the steps of:

generating a frame (PDU S1 of FIG. 1A) at a send station (SENDER of FIG. 1) in a network;

sending the frame (S1) from the send station to a receive station (RECEIVER of FIG. 1A);

storing a copy of the frame in a transmit buffer (a transmission window, col. 10, lines 55-65) at the send station;

discarding the copy of the frame if a resource constraint (time period Ts at the send station is met (expired), see col. 7, lines 35-37.

Regarding claim 70, Miklos further discloses the step of discarding the copy of the frame if a maximum number of stored frames is met (when a maximum allowable window size $CA + 2^{k-1}$ is exceeding, see col. 11, lines 12-23).

Regarding claim 71, Miklos further discloses the steps of:

receiving at the send station a negative acknowledgement (NACK) from the receive station indicating that the frame was not received by the received station (col. 7, lines 20-24); and

re-sending, in response to receiving the NACK, the frame from the send station to the receive station if the frame has not been discarded (col. 7, lines 24-25).

Regarding claim 72, Miklos discloses a method comprising:

receiving a first frame (PDU S1 of FIG. 1B) at a receive station (RECEIVER of FIG. 1B), the first frame having a first sequence number (S1 is a sequence number, col. 6, line 48);

passing the first frame up to a higher layer at the receive station for processing (col. 20, lines 5-6);

receiving a subsequent frame (PDU S3 of FIG. 1A) at the receive station, the subsequent frame having a sequence number (S3) that is out of sequence as compared to the sequence number (S1) of the first received frame;

determining a missing frame (PDU S2) based on the sequence number (S3) for the subsequent frame that is out of sequence; and

passing the subsequent frame (PDU S3) up to the higher layer at the receive station for processing (col. 20, lines 5-6) after a period of time (T_{R3} of FIG. 1B, col. 8, lines 6-13) has elapsed since the missing frame was determined, even if the missing frame has not been received at the receive station.

Allowable Subject Matter

5. Claims 59-67 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach a method of determining a period of inactivity that exceeds the threshold and sending the reminder frame in specific combination as recited in claim 59.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon D. Hyun whose telephone number is 571-272-3121. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris H. To can be reached on 571-272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


S. Hyun
10/26/2006


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